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10 UNITED STATES DISTRICT COURT
11 NORTHERN DISTRICT OF CALIFORNIA
12 SAN FRANCISCO DIVISION

12 UNITED STATES OF AMERICA,) No. CR 10-0860 (WHA)
13 Plaintiff,) UNITED STATES
14) SENTENCING MEMORANDUM
15 v.) Date: November 8, 2011
16 ANNABEL McCLELLAN,) Time: 2:00 p.m.
17 Defendant.) Court: Hon. William H. Alsup

18 **INTRODUCTION**

19 The United States respectfully submits this Sentencing Memorandum pursuant to
20 Federal Rule of Criminal Procedure 32 and Criminal Local Rule 32-5.

21 On April 5, 2011, the defendant, Annabel McClellan, pled guilty to the only count
22 of the Indictment charging her with obstruction in violation of 18 U.S.C. § 1505. The
23 defendant entered the plea of guilty pursuant to Fed. R. Crim. P. 11(c)(1)(C) and the
24 terms of a written plea agreement executed by the parties.

25 At the November 8, 2011 hearing, the Court, having already received the October
26 25, 2011 Presentence Report (“PSR”), may accept or reject the plea agreement in

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1 accordance with Fed. R. Crim. P. 11(c)(3)(A). If it rejects the plea agreement, the Court
 2 should so inform the parties, allow the defendant an opportunity to withdraw her plea and
 3 otherwise comply with Fed. R. Crim. P. 11(c)(5). If it accepts the plea agreement, the
 4 Court should include in the judgment the disposition agreed upon by the parties in the
 5 plea agreement and otherwise comply with Fed. R. Crim. P. 11(c)(4). Applying the
 6 relevant Sentencing Guidelines to this case, the United States agrees with the Department
 7 of Probation that defendant's total offense level is 12, that her criminal history category is
 8 I, and that her Guidelines range is 10-16 months imprisonment. PSR at 6 and 13.

9 For the reasons set forth below, the United States respectfully requests that the
 10 Court accept the plea agreement and sentence Annabel McClellan to fourteen (14) months
in prison; a three year term of supervised release; and a special assessment of \$100.
 12 Pursuant to the terms of the plea agreement, the sentence of imprisonment must be served
 13 "in prison" and therefore may not include community confinement or home detention
 14 pursuant to U.S.S.G. § 5C1.1. April 5, 2011 Plea Agreement at ¶ 8(a) ("the sentence to
 15 which the parties have agreed ... is as follows (a) a sentence of imprisonment of at least
 16 ten (10) months *in prison* and not more than sixteen (16) months *in prison*)(emphasis
 17 added). Because the defendant has been ordered to pay a \$1 million penalty in the
 18 parallel civil enforcement action, *Securities and Exchange Commission v. Annabel*
 19 *McClellan*, Case No. 10-CV-05412 WHA, the United States does not seek any fine in this
 20 case. Because the "victims" or persons directly and proximately harmed by the
 21 defendant's criminal conduct cannot be readily identified, the United States does not seek
 22 restitution in this case. 18 U.S.C. § 3663.

23 **SUMMARY OF THE OFFENSE CONDUCT**

24 The defendant, Annabel McClellan, participated in an insider trading scheme with
 25 her sister, Miranda Sanders, and brother-in-law, James Sanders, who both lived in
 26 London, United Kingdom. James Sanders was involved in a trading business in London.
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1 Annabel McClellan provided James Sanders with the names of target companies involved
2 in the corporate transactions on which her husband, Arnold McClellan, was working.
3 James Sanders used the confidential information to make so-called “spread bets” in the
4 London markets relating to the performance of the United States securities involved in
5 Arnold McClellan’s corporate transactions.

6 Arnold McClellan, who resided with the defendant in San Francisco, possessed
7 material, non-public information about corporate transactions involving publicly-traded
8 companies by virtue of his work advising private equity firms and other clients of his
9 business. At home, Annabel McClellan overheard her husband discuss confidential
10 details of the corporate transactions on which he was working. In this manner, she was
11 able to get confidential information about publicly-traded companies in the United States
12 that was valuable because it was material to the price of the securities involved and non-
13 public because the information was not yet known to the investing public.

14 Beginning in or around January 2007, knowing that it was illegal and wrong to do
15 so, Annabel McClellan began to convey confidential information to James Sanders about
16 deals on which her husband was working. She did so with the intent that James Sanders
17 would trade securities on the basis of the material, non-public information that she gave
18 him. Among other confidential information, the defendant told James Sanders the names
19 of public companies that her husband’s clients were negotiating to acquire and details
20 about whether or not she thought specific deals were going forward. Often, she conveyed
21 whether or not a deal was going forward by initially identifying the name of the
22 acquisition target and later telling James Sanders and Miranda Sanders whether or not her
23 husband was “still busy” on the deal.

24 Kronos (KRON) and Getty Images (GYN) were two of the public companies about
25 which Annabel McClellan provided material, non-public information to James and
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1 Miranda Sanders. James Sanders made approximately £552,967 (UK pounds) on Kronos
2 and approximately £396,851 (UK pounds) on Getty Images.

3 Beginning in or about October 2009, Annabel McClellan obstructed an
4 investigation by the United States Securities and Exchange Commission (SEC) into the
5 insider trading scheme involving the defendant, Miranda and James Sanders. In
6 particular, Annabel McClellan lied under oath to the SEC by (1) falsely denying that she
7 did not get any confidential information from her husband, Arnold McClellan; (2) falsely
8 denying that she learned about the companies her husband's clients wanted to acquire
9 before the acquisitions were publicly announced; (3) falsely denying that she ever talked
10 to James Sanders about Kronos; and (4) falsely denying that she had ever talked to James
11 Sanders about Getty Images.

12 The United States estimates that the defendant's wrongdoing defrauded investors
13 in the United Kingdom of approximately £1.54 million or about \$3.05 million.

GUIDELINES CALCULATION

15 The United States agrees with the Department of Probation's calculation of the
16 Guidelines as:

21 PSR 5-6. The defendant's criminal history category is I, resulting in a Guidelines range
22 of 10 to 16 months imprisonment. PSR at 13.

CONTESTED SENTENCING ISSUES

If the Court accepts the plea agreement, the United States anticipates no contested issues relating to the defendant's sentencing beyond argument about what sentence within the limits agreed to by the parties is appropriate in this case. Crim. L. R. 32-5(b).

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SENTENCING RECOMMENDATION

A. 18 U.S.C. § 3553(a) Factors

By her own admission, Annabel McClellan betrayed her husband for years in a duplicitous and destructive manner; she stole highly confidential, material, non-public information; she tipped her sister and brother-in-law in order to illegally benefit her family; and she lied repeatedly about it under oath to the SEC. This was not a one-time lapse of judgment. The defendant undertook a carefully planned and executed criminal scheme that required a superb, internationally-coordinated investigation by the SEC and the Financial Services Authority (FSA) in London to detect.

By any measure, the nature and circumstances of this offense are so serious that only a sentence of incarceration can act as a meaningfully deterrent. As a general matter, courts have recognized that “*white collar crime . . . requires heavy sentences to deter* because it is potentially very lucrative.” *United States v. Hauptman*, 111 F.3d 48, 52 (7th Cir. 1997) (emphasis added). “Because economic and fraud-based crimes are more rational, cool, and calculated than sudden crimes of passion or opportunity, these crimes are prime candidates for general deterrence.” *United States v. Martin*, 455 F.3d 1227, 1240 (11th Cir. 2006) (internal quotation omitted). “Defendants in white collar crimes often calculate the financial gain and risk of loss, and white collar crime therefore can be affected and reduced with serious punishment.” *Id.* at 1240.

B. Other Relevant Factors

Countervailing considerations weigh against seeking a prison sentence of greater than 14 months, however. First, the defendant is a mother of two young children. The duration of any prison sentence should balance their needs with the need for deterrence and punishment.

Second, the defendant, once charged, decided to cooperate with the government's investigation in a timely manner. Among other things, Annabel McClellan voluntarily

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1 agreed to a limited waiver of the marital privilege. With that waiver in place, Annabel
2 McClellan and her counsel met with a total of eight (8) representatives of the government
3 (two FSA investigators; three SEC attorneys; two federal prosecutors; and one FBI
4 Special Agent) and answered every question put to her over the course of a three-day
5 interview. Given the need to understand the relationship between Annabel McClellan and
6 her husband, some of the questions were personal in nature and difficult for the defendant
7 to address. To her credit, she did. And in so doing, Annabel McClellan, by her
8 cooperation, allowed the government to directly investigate the marital dimension of this
9 case in a manner that would otherwise have been foreclosed.

10 Based on these other factors, the United States reduced its sentencing
11 recommendation by two months from the maximum sentence of sixteen (16) month in
12 prison agreed to as permissible by the parties.

CONCLUSION

14 Taking into account all of the factors cited in Section 3553(a), the United States
15 recommends that the Court impose a sentence of 14 months in prison and a three-year
16 term of supervised release. This sentence appropriately reflects the severity of the
17 defendant's criminal conduct as well as the need for both general and specific deterrence.
18 The government submits that a lower sentence would not adequately reflect the
19 seriousness of the defendant's crime or promote respect for the law.

20 | DATED: October 28, 2011

Respectfully submitted,

MELINDA HAAG
United States Attorney

/s/

ADAM A. REEVES
Assistant United States Attorney

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